IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1945

NO. 1016

ROSE MARY HASH, Petitioner

Vs:

COMMISSIONER OF INTERNAL REVENUE

NO. 1017

G. LESTER HASH, Petitioner,

Vs:

COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR WRITS OF CERTIORARI
TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE FOURTH CIRCUIT

REPLY BRIEF FOR PETITIONERS IN SUPPORT

OPPIE L. HEDRICK
Counsel For Petitioners

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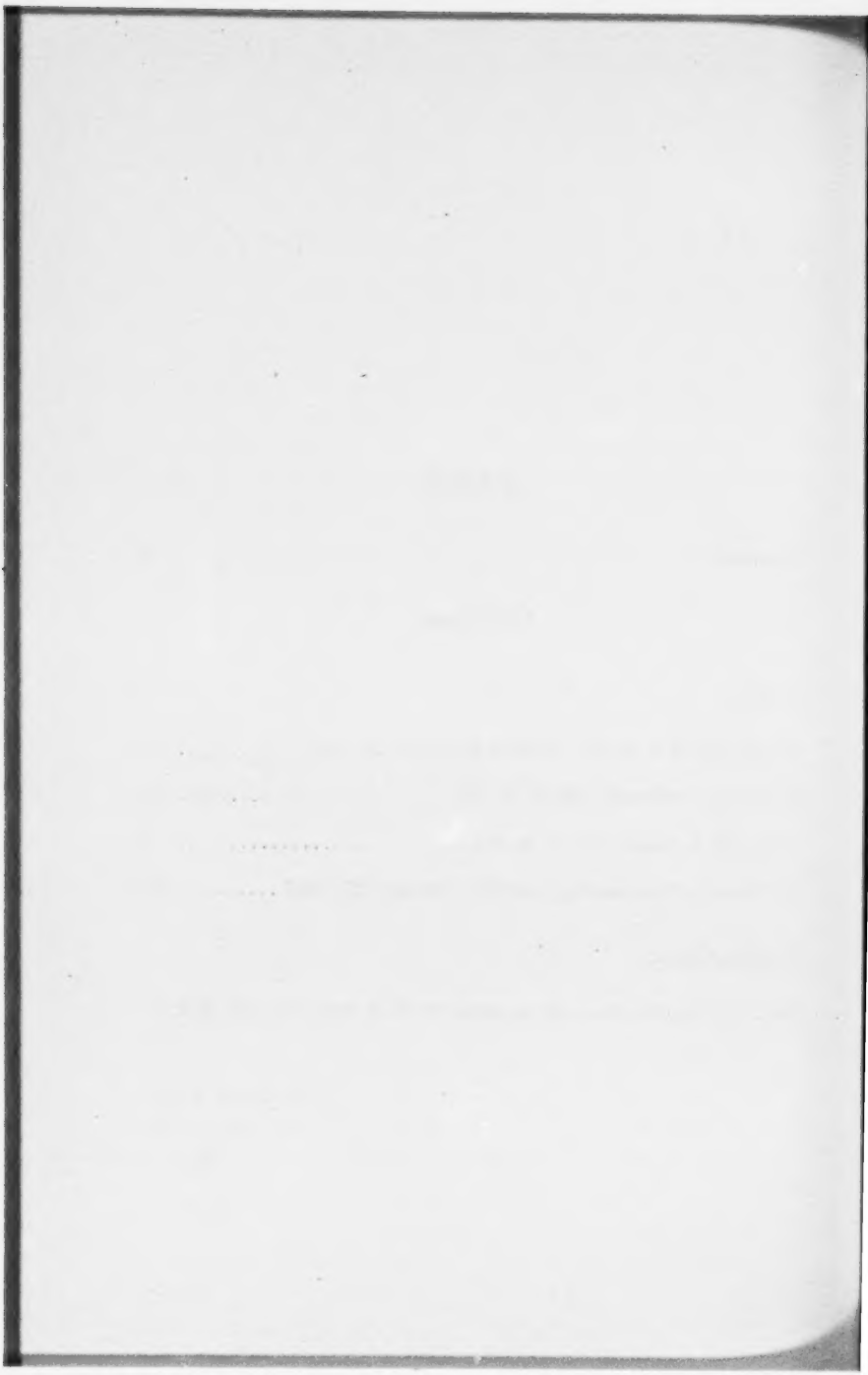

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REPLY BRIEF FOR PETITIONERS IN SUPPORT

The Petition set forth three principal reasons for granting the writs:

(1) The conflict of the decisions below with vital principles applied by other Circuit Court of Appeals as to long-term irrevocable trusts.

(2) The probability of a conflict with the applicable decisions of this Court.

(3) The desirability of obtaining this Court's

views in the interest of a more stable jurisdiction and tax administration.

All three reasons are tacitly admitted by the respondent's brief; the last one by simply ignoring it, the other two by sidestepping the real issue.

The real issue is the taxability of trust income under the doctrine of *Helvering v. Clifford*, 309 U. S. 331. Not in issue is the substance and validity of a family partnership.

The substance and validity of the partnerships involved in the present cases has been expressly recognized by the Tax Court's clear findings of fact (R.197-198). These findings are entitled to finality. They should be recognized by the respondent as they were by the Circuit Court of Appeals.

The decisions below, both in the Tax Court and the Circuit Court of Appeals, invoked this Court's decision in the *Clifford* case. In both courts below the issue was clearly framed. It needs no reframing here. Such reframing is attempted in the respondent's brief by shielding behind the cases of *Commissioner v. Tower* and *Lusthaus v. Commissioner*, decided by this Court on February 25, 1946.

These cases involved the validity and substance of family partnerships which are not in issue here. Were they in issue, it would have been easy for the Tax Court to make an appropriate finding to that effect rather than the finding it did make.

For this reason the *Tower* and the *Lusthaus* cases are neither controlling nor conflicting. Gifts into trust do not establish a *fortiore* as to the validity of a

family partnership. Neither does the imposition of a family partnership upon a trust substract from its character as such. This character is retained whether the corpus be cash, securities or a partnership interest.

The taxability of the trust income is to be viewed, therefore, in the light of the *Clifford* case, as it was done by both courts below. It is not to be viewed in the light of the *Tower* and *Lusthaus* cases, as the respondent would want us to do.

Viewed in the light of the *Clifford* case, the conflicts asserted in the petition do exist. They are not repudiated by the respondent, but rather tacitly admitted.

Viewed in this light, the probability of a conflict with the applicable decisions of this Court also exists. In this respect the measured dissent of Judge Coleman appears entitled to greater weight than the unsupported contentions of the respondent.

The respondent's failure to discern the possibility of a conflict with this Court as to the distinction between "economic gain" and "non-material satisfactions" in the case of *Helvering v. Stuart*, 317 U. S. 154, should not be of much concern either. This failure admits his inability of pointing out any economic gain realizable by the petitioners.

Under these circumstances, the reluctance of the respondent to even discuss the third reason advanced in the petition becomes more understandable. Now the respondent cannot see any need for resolving the confusion which he himself has termed "considerable" in his Regulations (Pp. 15 - 25 of the Appendix to the

Petition). The respondent seems satisfied with the result of the judicial function assumed by him through the issuance of the Regulations referred to. . By omitting them from the Appendix of his own brief, he presumably shows his reluctance, however, to have them applied to the cases at bar. This finds its explanation in the *reservatio mentalis* made in those Regulations as to the creator of a family partnership (P. 25 of the Appendix to the Petition).

By evading the real issue, the respondent renders support rather than opposition to the reasons advanced by the petition for granting the writs.

Wherefore it is prayed again that such writs issue to the Circuit Court of Appeals of the Fourth Circuit.

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Counsel for Petitioners.